The THIRD and LAST PART OF THE *Magiſtracy and Government of* England VINDICATED:

With REASONS for a General Act of Indemnity, &c.

IT hath been the obſerved Misfortune of moſt mix'd Governments, particularly of our own, never long to enjoy the entire Friendſhip of all its individual Subjects; the lowermoſt Side hath too frequently acquired the greateſt ſhare of the Peoples Love, or at leaſt, Pity: It's then no point of Wonder, that the Servants of former Crowns ſhould incur their proportion of Envy, Hatred, and Reproach; and amongſt all thoſe none more obnoxious to it, than the Miniſters, Officers, and Inſtruments of Juſtice; for ſuch are the vitiated Sentiments of Perſons intereſted in all Suits, that the Vanquiſh'd is certainly injured, or thought, or ſaid to be ſo, which is all one, by the Perſons themſelves, their Friends or Relatives, their Patrons or Creatures. In truth there's ſcarce a Tryal on the Plea or Crown-Side, but one Party, and ſometimes both, do leave the Court with a ſwinging Curſe or two on Judge, Council, Jury, Witneſſes, and perhaps all concerned; upon which account, it can never be deemed a juſtifiable, much leſs a commendable and meritorious Imployment, for Lawyers to note and report, and afterwards publiſh to the World the Clamors of ſuch Malecontents, with the addition of Sarcaſm inſtead of Argument, and bluſhleſs Lies inſtead of Law and Precedents, and all this under the pretence of ſerving their Majeſties and the Government: but 'tis a mere pretence; for firſt, It's not their Province; theſe Publications are made by them, not as Legiſlators or Judges, but as private Perſons; and one of their Libels ſeems calculated only for private Lucre, as either the hopes of a Place, or increaſe of Practice, by telling the Town in the firſt and laſt Pages where the Author lives, of what Profeſſion, and how long ſtanding; an Art learn'd from ſome of thoſe exquiſite Doctors inhabiting towards the Fields, whoſe Kuowledg and Converſation is pretended to be in Heaven: Another writes for Bread, and ſcribbles that he may eat, &c. A third, or rather the firſt and prime, is inſpired with Venom and Revenge, even the pure Spirit on't, as one baulk'd he is angry at all, and becauſe ſome were not his true Friends, he's reſolved to make Enemies of thoſe who deſpiſe him, and of them the number is great. But ſecondly,

It's of no uſe to the preſent Government, for Truth only can be a ſure Baſis of Reſpect to that; and in caſe of Slander, the Filth rebounds and the Dirt thrown moſt ſurely turns on, and dawbs their own Faces, eſpecially when they arraign thoſe as ignorant, whoſe Learning, Knowledg, and Judgment, are ſo clear and acknowledged, as to render the Cenſors unworthy even of being their Bag-bearers; the like when they cenſure thoſe as corrupt, who have always boldly done their Duty, even in defiance of a Court-Cabal or a Popular Faction; who have always

adhered to the old *Engliſh* Law and their juſt Opinions in it, tho Frowns from *Whitehall*, or Clamors from *Wapping*, tho Lampoons from *Grubſtreet* or a worſe uſage from an *Obſervator*, tho a *Superſedeas* or a *Take him*, &c. were the only Reward they could expect for ſuch their (formerly called Puritanical now Arbitrary) Juſtice: Gentlemen who never polled the Law (which the great and good Sir *Matthew Hale* did truly call a robbing the Poor of Juſtice) for the acquiring a Farm or an Office, or a lumping Sum for Sale of it; who never begg'd an Executorſhip for to gain a Fortune; Gentlemen who never gave ſtrained Opinions concerning the Revenue when made for their Clients the Farmers, but clamored at the ſame when uſed by their King with more Moderation; Gentlemen who parted with their Places, tho of Honor and Profit, rather than comply with a Court-Opinion or a Club-Notion, when others (I name no body) offered entire and everlaſting Service, if they could have preceded or ſucceeded them, (Teſte.... *apud* St. *James*'s and the City of *Gloceſter*) but miſſing their aim then, as now they do, their Gall muſt have a Vent, and ſo it hath with a Vengeance, when a true and bold Juſtice is made the Subject on't: The Reaſon is plain, thoſe Mens Repute is too great for Truth, Probity, and Uſefulneſs; An Eclipſe is neceſſary, if poſſible; for if otherwiſe, the Defender will never be Keeper, the Remarker Sollicitor, nor the *Grays-Inn* Poet wear Scarlet in *Wales*; their hopes are but ſmall, unleſs they can poſtpone all their Betters by Death, Commitments, or that which is but little worſe, Reproach and Slander: but ſome think their Sting grows weak, for 'tis now apparent that there are a ſort of Men, who, tho they might and did love his Majeſty when and as Prince, yet do not, will not, cannot love him, or any Man elſe, as King: and this is now pretty plain. But thirdly,

Their Libels are criminal, and injurious to common Juſtice, for they create a Diſreſpect and Contempt upon all Judiciary Proceedings; to arraign all paſt is to excite a Suſpicion of all preſent and future Adminiſtrations; whereas *Plowden* ſaith, fol. 38. *It's a good and ſure way to believe the laſt Judgment*; and if ſo, 'tis plain what Name the contrary Practice deſerves; beſides, were it otherwiſe, the Inſtitution of Judges and Courts were vain, and our State, as *Engliſhmen*, the moſt unfortunate; for we have no Rule but *ex ore Judicum*, or from particular Statutes, and of them they are the Expoſitors. Now let's inquire which is Law, the Defender's Fancy in his Argument Enter *S.* and *B.* or the Judgment in the Exchequer Chamber, affirmed by the Lords? If the Judicial Reſolution be ſo, then the Publication of his Argument was ſcandalous, and I am not to follow him as my Guide: but perhaps he'll tell me, That manifeſt Reaſon and good Lawyers ought to govern me; if ſo, then I ask him, Who ſhall I follow in the E. of *D*'s Caſe of a *Capias pro fine puis* Judgment, &c. whether the eleven beſt Lawyers, or the Vote of the Houſe? if the latter, why not ſo in the former Caſe? and if otherwiſe, then his Judgment was miſtaken; ſo that *quacunque via data*, there's no Infallibility in this World, and conſequently no excuſe for private Cenſures of publick Proceedings in Courts of Juſtice: beſides, the Books are pretty clear, that ſuch things are puniſhable; but I leave the Reader to peruſe them at leiſure. Now let us but conſider the Confuſion that muſt enſue upon the publick countenancing ſuch a Practice as theſe Scriblers have introduced; for if allowable on a disbanded Judge, 'tis ſo on a ſitting one, for the Caſe is the ſame in reſpect of private Lawyers who pretend to think their Judgments erroneous or corrupt; but ſurely both are unlawful. Beſides all this, in the preſent Caſe

They have palpably wreſted the Law in divers Inſtances: I need name no more than the Indictment in queſtion, which that it was legal and good, moſt Men do now agree, eſpecially ſince the dint of the Oppoſal ſeems current only on the Evidence, with a Waiver of the other, the Indictment being good ſince that Guards are proved lawful, and the Obſervator concedes it the moſt legal part of the Procedure, and the Juſtice of Parliaments, &c. ſuppoſed written by the Defender, ſtrains all its Forces on the Evidence and the Times; and their Follower, the Poet, in his new *Non-conformiſt*, pag. 10. runs the ſame way too: only

There remains one Objection to the firſt Vindication, which is, that it affirms, Words may be Treaſon within the 25 of *Edw.* 3. and the Remarker challenges a proof of it, and asks where it may be found; and the *Non-conformiſt* quarrels at the Lawyer that did aſſert it, and ſome others have done the ſame *ore tenus*.

I confeſs, that the firſt Sheet did publiſh the Aſſertion, but waved its Eviction, for fear of a ſtrained uſe of ſuch Opinion to ill purpoſes, for the ſerving a turn upon particular Occaſions; nor had there

there been any more ſaid on it, but that their Confidence and Malice ſeems ſo exorbitant as to extort a Check, for that the Regulator is grown ſo confident of his own Knowledg as to undervalue the greateſt of Judgments; whereas his Common-place Book affords us no Titles but Colluſion and Malice prepenſe; and his Practice hath been much of the ſame ſtamp, only that ſometimes he hath added a little of the Lunatick as appears by his Rhimes, Prophecies, Dreams, Politicks, and other religionary Works.

To prove the Aſſertion, I depend not on the Authority of the ſenſe of the Commons Houſe 1 *Jac.* 2. tho (let the Cryer for Juſtice, or who elſe pleaſes contradict it) it was in Fact then affirmed and agreed unto, and upon that, the then King's Council and Courtiers deſiſted the Motion and Proſecution of a Bill to make Words, *&c.* But that's a ſupernumerary Argument, there's more than enough beſides.

I am not to maintain that all rank, malicious, groſs Words againſt the King or Queens Perſon are ſuch, nor that whoſoever drinks an Health to our Sovereign the Lord the People, or to the late King *James*, is a Traitor; but that Words ſignificative and expreſſive of a preſent Intention to do an Act to the King's Deſtruction, ſuch Words deliberately, maliciouſly, and adviſedly ſpoken on purpoſe to accompliſh the Demiſe of the King, as by promiſe of Money with importunity to commit the Fact, may be an overt Fait to prove the Imagination within. 25 *Edw.* 3.

To evince this, let us think a little ..... and 'twill be plain

The Words of this Statute are clear and of an eaſie Conſtruction, if we will allow thoſe dull old Times to ſpeak Senſe: They are to this effect, That if ſhall compaſs or imagine the Death, *&c.* and *de ceo provablement ſoit attaint per overt fait*: Now the Objection is this, That Words are not Deeds within that Clauſe; to this the Anſwer is very clear; for by all the Grammatical and other Rules for Interpretation of the Senſe of Words, the latter part of a Sentence is to be conſtrued (if uſed by way of oppoſition) as oppoſite to the thing mentioned and intended in the foregoing Part, and not as oppos'd to every thing which it may *ex vi termini* exclude in other Caſes; and this is an agreed Difference both amongſt Divines in Expoſition of Sentences in Scripture, and Grammarians in almoſt all Caſes whatſoever: now to apply this;

Overt fait is uſed not in oppoſition to Words, for there's no ſuch thing mentioned; but 'tis added in contradiſtinction to that which was before ſpecified, *viz.* Thoughts, and ſuch are Imagination and Compaſſing; and therefore *overt fait* muſt mean any open manifeſt thing as can truly diſcover thoſe Thoughts, as may proveably attaint the Traitor of ſuch his Imagination: and it is a moſt natural and proper Mode of Speech, if they did intend, as moſt undoubtedly they did, that the Thought ſhould be the thing prohibited, then 'tis as plain they intended by the Word *fait* any diſcovery of ſuch Thought by Words or Actions; and ſo ſaid *Newton* in 19 *Hen.* 6. that to imagine the Death of the King is Treaſon, tho he do no act towards it, if ſuch Imagination be diſcloſed that it can be tried if he did ſo think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in oppoſition, then the laſt will exclude both the former; but here when uſed only in contradiſtinction with Thoughts, it ſeems plainly otherwiſe. That Deed, when uſed in Oppoſition to Thought, doth include both Words and Acts, none can deny; a thouſand Inſtances might be given of it: and in the exacteſt propriety of Speech, Words are Deeds when and as contradiſtinguiſht from Thoughts; for the Soul thinks even as abſtractly conſidered from the Body, but Man never ſpeaks without Action and Motion: the difference is plain, and needs no Explication. But further,

I would fain know, What is a Conſult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his traiterous Imagination by Words, and ſo of an Agreement to commit the actual Murder, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now ſuppoſe one Man thinks and intends to deſtroy the King, and by Words doth willingly, deliberately, and adviſedly declare this to another that is not of his Mind, tho by miſtake is thought to be ſuch; is not this the ſame thing? If a Man traiterouſly offers and promiſes to another a thouſand Pounds to perpetrate the villanous Act; if he accept it, and a parole Agreement is made between them accordingly, ſurely the Apologiſts for Treaſon will agree that to be an overt Thing, and both guilty, if it can be proved by two Witneſſes of credit. Suppoſe then the Party offered and promiſed doth

abhor and refuſe, will that make a diſtinction? if it does, 'tis without a difference: perhaps the Word Conſult will be called a new Cant; we know whoſe Coin it is, and who gave it the firſt ſtamp; 'twas no leſs a Man than Sir *Will. Jones*, who at the time of ſuch his Invention was no Prerogative Lawyer, tho conſiderably ſo in Times then lately paſt: nor is it imaginable what is the meaning of a Conſpiracy or Plot to take away the King's Life, but a Communication by Words between ſeveral Traitors concerning ſuch Act, and the method of its Accompliſhment, and a Declaration by Words of each Man's being fixed in that purpoſe; which if it be proved by ſufficient Teſtimony, will undoubtedly be an Evidence of a Compaſſing, &c. which is the Treaſon prohibited and puniſhable; nor can the Meeting make it more ſo, for they could not diſcourſe unleſs they met; and therefore 'tis the Words only that are the manifeſt *overt fait*. Nor doth *Hugh Pynes* Caſe, or the Reſolution of the Judges therein, contradict this, notwithſtanding the Confidence of the Remarker that it did; they only ſay that the Words in that Caſe were not Treaſon, that thoſe Words were not an Evidence of Compaſſing, that for thoſe Words he could not be Indicted upon that Statute; but their Opinion doth plainly imply, That had the Words been Evidence of a Compaſſing, &c. as they were only ſlanderous and reflective, it had been otherwiſe; and the Inſtances there mentioned are full to this, as *John Quick*'s Indictment was only for Words to King *Henry*, unleſs ſtanding up and ſpeaking will alter the Caſe: *Thomas Koiver*'s, *John Clipſham*'s, and *John Mirfield*'s, are all for Words, and ſome others there ſpecified. Beſides, it's obſervable that in moſt Indictments on this Statute, ſome Words have been alledged in them as an *overt fait* to demonſtrate the Imagination, which would be impertinent if the Law were thought otherwiſe. I'll not inſiſt on *Colledge*'s, becauſe that Caſe hath been cavilled at, tho with no colour as to the Indictment: part of *Patrick Harding*'s Indictment was *loquendo publicavit*, but I'll not dwell on that, becauſe fooliſhly drawn; but *Arthur Crohagan*'s Caſe in *Cro. Car.* is pretty full and for Words; and the Words of the Book are, That the traiterous Intent and Imagination of his Heart was declared by his Words, and therefore held High Treaſon within the expreſs Proviſion of 25 *Edw.* 3. and upon his coming into *England* he was arreſted, &c. Now no Anſwer can be to this, but that he came into *England*; but the Words only ſhewed his Intent and by that Book the Words are alledged as the *overt fait*: beſides the Caſe of *Blanchflower* and *Atwood*, *Mic.* 5 *Jac.* 1. *B. R.* in *Telverton*'s Reports 107. *per curiam*, reſolved, that Words may be Treaſon; and that is an expreſs Reſolution, for there was then no temporary Law in being concerning Parole Treaſons that I know of. The Caſe of *Berisford* and *Preſſc. Hill.* 8 *Jac.* 1. *B. R. Yelvert.* 197. adjudged, that Treaſon may be committed by Speech as well as by Act, for any thing which diſcovers the Mind of a Man to be traiterous to his Sovereign, is capital to the Party: *Hitcham ad Brock Paſch.* 1 *Car.* 1. *Hutt.* 75. held *per cur.* that the ſpeaking of Treaſon was Treaſon, and that *ſermo eſt index animi* as well as Preaching or Writing; and no Man can doubt but thoſe are Acts; and Speech is as much ſo.

Beſides, if the Conſequence of the contrary Doctrine be well conſidered, 'twill appear to be a plain Evaſion of the Statute of 25 *Edw.* 3. as is manifeſt upon the reading it: and the common Books are full of this, for otherwiſe no Action could lye for ſaying a Man hath ſpoke Treaſon: but here's enough ſaid to anſwer the Challenge, where's the Authority for ſuch an Aſſertion? tho infinitely more might be ſaid for it, nay 'tis as eaſie to dumbfound the contrary as 'tis to tranſcribe Law Caſes. If this doth not give them ſatisfaction, they ſhall remain unſatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown-Law, leſt I ſhould provoke our new Scriblers to double the Plague by their Replies. If they attempt an Anſwer, I'll leave the Tobacconiſt and Grocer to confute them; and unleſs a Trunk or Band-box chance to bring them to my View, I'll never be tempted to read them; and of this they may aſſure themſelves. I ſay it to complement the Reader with Patience to peruſe the reſt of the Sheet, being aſcertained never to hear more on't, at leaſt not from this hand.

Some perhaps may wonder at the reaſon of the Publication of theſe Sheets, and conceive them the product of Malice on one ſide as thoſe virulent Pamphlets are on the other: To ſolve that Scruple, I need only repeat the Reaſons alledged in the firſt; but a Repetition is damnably dull as well as tedious and irkſome; I'll therefore add a new one, and that's to ſhew the Reaſonableneſs as well as the Neceſſity of a general, indefinite, ſpeedy Act of Oblivion; for tho the Blood-hounds fret, and huff, and bounce, as if all their

Madneſs and Rage were founded on a true Baſis, yet 'tis apparent from the Premiſes, that their foundation is falſe, and the Law is direct and plain in their teeth, and doth and will juſtifie in moſt of the particulars, at which they foam their Curſes and Execrations: Reaſon therefore as well as neceſſity enjoins a ſilence as to what is paſt, for otherwiſe the Kingdom can never have its deſired ſatisfaction, for in points juſtifiable or at leaſt doubtful, the juſtice of inflicting Puniſhments can never be vindicated, did I call them Puniſhments, I beg the Readers pardon for the Impropriety, however I'll not name their proper term, but with calmneſs, endeavor to Evince three things.

1. That it would be grateful to the Nation in general, and every good Man in particular. 2. Conducing to the Settlement and Intereſt of the preſent Government; and laſtly, That 'tis conſiſtent with and promotive of the higheſt and trueſt Juſtice.

Firſt, The Nation did and doth expect it, for Revenge is never natural but when freſhly purſued, and time wears off the ſenſe of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this purpoſe: the horror of any Crime, or at leaſt the deteſtation of the Criminal, grows faint and languid upon the removal of the Object, eſpecially if time interpoſes with the acceſſion of preſent fears, which as preſent do more affect us than greater if more diſtant. It can never therefore be thought the deſire of the People of *England* to have their Neighbors or Acquaintance harraſs'd and perſecuted by Fines, Confiſcations, Impriſonments, Marks of Diſgrace, or the like, for Actions done in the laſt or former Reigns, about which the World hath been ſo much divided, if lawful or not: Beſides, that this was the general Expectation of the Kingdom on the new Settlement or at leaſt the Coronation, of which nature there never was an Inſtance before this without an Act of Grace; And it is moſt plain, that none are Adverſaries to it, but the *Republicans* and the *Jacobites*, not for that they need it not, as I ſhall ſhew anon, but for different ends, each drives at and wiſhes a Change, it matters not to what, for if to the latter the other hopes a Commonwealth will be the more deſirable: If the *Republican* ſucceeds, then the other believes a Reſtoration the more eaſie, but both diſlike the preſent, and therefore dread a Settlement, and conſequently dread the Peoples ſatisfaction and quiet under Their Majeſties, and conſequently dread an Act of Indemnity; 'tis true, the Cry for Vengeance is loud, but 'tis only from theſe two corners; which leads to the ſecond particular, that

It will eſtabliſh and promote the Intereſt of the preſent Government, while the popular Bully is full of his Damme's and Menaces, there's certainly danger, and where there's danger there's fear, now fear cauſes an averſion, and averſion begets hatred: and the Object of it is that from whence the ſuppoſed danger ariſes, which is from the Government irritated by the Venom and Fury of thoſe hot-headed Animals, whatſoever hath power and will to hurt me muſt and will be abhorr'd; and though none are immediate actual Patients, yet the being poſſibly obnoxious to it, and the want of ſecurity for the contrary doth of neceſſity cool their reſpect to the preſent Power, under which they are not ſafe; and this tempts them and their Friends upon contrivances and attempts of Danger both to themſelves and the Publick; and danger by the attempt is no diſcouragement where the like danger attends their forbearance: and this is of weight, unleſs *Cromwell*'s Politicks be thought Chriſtian, to cheriſh and promote a Plot, as of advantage to Settlement, if ſeaſonably diſcover'd and ſubtilly manag'd; but however 'tis as true, that Enemies who are deſperate ought never to be thought inconſiderable; for they may ſhake and batter what they can't deſtroy, they may do miſchief though they can't work ruin to their Adverſaries, upon which account the temptation of continual impending Danger is fit to be removed: Beſides

The want of Security, and the fear of Danger, making Men uneaſie in their thoughts, repleniſhes them with Complaints and Murmurs at every awkard Action, or ſuppoſed miſcarriage of the Government feared; it makes them Mutineers at publick Taxes and Impoſitions, partly becauſe they think it ſtrengthens and increaſes the power of hurting them, and partly becauſe it ſponges and bleeds them of that, which they fear an occaſion of themſelves to bribe Blackrods, Sergeants at Arms and other Goalers with; and in a conjuncture when extraordinary Aids are indiſpenſibly requiſite, no temptation to complaint is deſerving of Countenance; beſides, that it cramps Trade and diſcourages Projects for Publick Good, &c. but further, Its the living, not the dead, the happy, contented, and chearful, and free, not the oppreſſed, miſerable, forlorn, or impriſoned Subject, that doth Service to the Crown and the Publick.

It

It hinders all ſuch as are thought to be ſo obnoxious from any bold Eſſays for the uſe of the preſent Government, for that if ſucceſs be the attendant of ſuch their attempt, they continue unſafe notwithſtanding, for no Man will adventure an hazard to ſecure that Authority, which he is not ſure will make him ſafe, if he doth undertake the preſent Adventure, and eſcapes that Danger, and performs the Service; ſo that Self-preſervation renders it their Policy to unhinge themſelves from, or to be ſhy of the preſent Power, of which a conſiderable number might prove uſeful Friends; which are now Newters at leaſt, if not Enemies.

Its obſervable in all foreign Policies either to work a total Extirpation of the whole Party, or an univerſal Indemnity after ſo grand a Revolution as this was: the former is not to be practis'd here for two Reaſons, 1. Becauſe we want People, 2. Many of our Friends muſt be baniſh'd too, for divers of the ſuppoſed Criminals were inſtrumental to the preſent Change, &c. *Ergo* the latter only is and can be moſt adviſable: for once I'll ſuppoſe their numbers but ſmall in compariſon to the Saints and Innocents, (if any ſuch there are in the Nation) yet under our preſent Circumſtances all are to be obliged as Friends that poſſibly may; but if the thirteen Heads, with the Surrenderers Clauſe, and all its and their Subdiviſions had been reduced into a Law in the deſigned act of Attainder, one third at leaſt of the Nation had been involved, who with their diſobliged Relatives and Dependants is not ſo contemptible a Flock, though but of Sheep for the ſlaughter: beſides

It's impolitick as well as unjuſt to deny or delay it to thoſe who have ſubmitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full and general Pardon both in *Scotland* and *Ireland* to all that took up Arms, for all their Sins then paſt and preſent; it provokes the former to repent their non-concurrence with the latter, for 'twas but reſuming their Quiet and Submiſſion at pleaſure, and then they were ſafe, which now they are not, but under continued Menaces and Dangers both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or ſpeak with a Damme in his Mouth.

Experience further tells us that nothing turns or changes the humor of the *Engliſh* Commoner, like Rage, Inſolence and Cruelty in their fellow Subjects when made Superiors, and ſuch is raking into old Sores thought to be; it matters not whether juſtly or no as to this purpoſe, the effect is generally ſuch: The Star-Chamber in *Car.* 1. his time, the Major-General's in *Cromwell*'s time; The Tophamizing of Abhorrers in *Car.* 2. his time; The Weſtern Campaign, and the other criminal Proſecutions in the beginning of *Jac.* 1. I ſay all the Violences, uſed in theſe ſeveral periods (and yet they had their reſpective Provocations) did moſt notoriouſly alter the kidney of the Commons, and made even their once beloved, firſt dreadful and terrible, then odious and loathſome, they produced conſiderable Changes in their ſeveral Conſequences, I could come nearer home even to the tearing of *Moore* and *North*, and other Citizens of *London*, which firſt turn'd the Stomach of that City, as is now apparent, but *Sat verbum, &c.* but further

The want of this, renders both the Policy and Honor of the great Bellowers for Vengeance to be juſtly ſuſpected, 1. Their honor in taking care of their own Servants for all their Exceſſes upon the Revolution, and oppoſing the Indemnity of all others, as by the Act appears, 2. Their Policy, for that its obſervable in Story, thatt the Aſſociation in Queen *Eliz.* time was under a Proteſtant Prince for the Proteſtant Religion, and no ill Succeſs attended it, yet thoſe wiſe Anceſtors of ours thought fit to ſecure themſelves by turning the Aſſociation into a Law, and a general Act of Indemnity; I do not ſay they needed it, but the Aſſociators in that Reign thought it needful; and 'tis very conſiderable, that in no Reign was there more Peace and Quiet than in hers, and in none were there ever more free and general Pardons, and in truth the latter was the occaſion of the former; for when Men are once ſafe and quiet, no ſmall Temptation will provoke any more adventures though they like another better, yet Men being eaſie are generally contented: There was one free and general Pardon of the Queens at firſt confirmed, 5 *Eliz.* cap. 11. another, 8 *Eliz.* cap. 18. 13 *Eliz.* cap. 28. 18 *Eliz.* cap. 24. 23 *Eliz.* cap. 16. 27 *Eliz.* 13. 29 *Eliz.* cap. 9. 31 *Eliz.* cap. 16. 35 *Eliz.* cap. 14. 39 *Eliz.* cap. 28. 43 *Eliz.* cap. 19. Eleven in number, and never five years without a Parliament-Pardon, and this made Parliaments and Crowns the darlings and deſire of the People: Beſides, it's the Intereſt of each party amongſt us, though ſome don't ſee it, the *Whig* ought to promote it for two Reaſons, 1. Leſt being the leſſer part he chance to feel the want of it, and for that he has given ſome Provocation, 2. That if he be the greater, the Memory of his Vengeance and Fury may be forgotten, and himſelf reſtored

to the good Opinion of the reſt of Mankind, by one act at leaſt of good Nature: The *Tory* ought to purſue the ſame meaſures, and much for the ſame Reaſons, for his Top-gallantry hath been, and if repractis'd will be again as odious and loathſome to the moderate and good, as ever it was, or as the others could be: Temper therefore is now the Game, and a Veil over all that's paſt is certainly the moſt Politick, eſpecially conſidering the multitude of the ſuppoſed Criminals, and the juſttice of their ſeveral Excuſes, which comes next; for

Laſtly, It's conſiſtent with and promotive of the trueſt and higheſt Juſtice, for in moſt of the Caſes the Law is doubtful, and to puniſh Opinion in matters of Law, is as unjuſt, as to perſecute miſtakes in matters of Religion is unchriſtian, and new Laws for Government *de futuro* are more agreeable to natural Equity than a retroſpective Fury; that it is ſo, is plain, the modern Scriblers have ſufficiently proved it. In two of the Caſes cited they differ themſelves, for Dr. *Story*'s Caſe the Defender cry's 'tis not Law, the Remarker agrees 'tis, and that he was well hanged, for *Plunket*'s Caſe the Defender cries he was well hanged, for there was Treaſon enough in his Charge, the Remarker inſinuates as if he ſuffer'd hardly; now what ſhall a little Lawyer believe between theſe two great bodies of Learning? the like may be ſaid of *Soames*'s Caſe, and the other above-mentioned: But what is more? In the Voluminous Argument againſt the *Diſpenſing Power* owned by Sir *R. A.* he doth concede that there are ſome Prerogatives ſo perſonally and inſeparably inherent in the Crown, that no Act of Parliament can cramp or diminiſh or at leaſt take away; and that being granted, I'm ſure all that the reſt of the Book ſays can never make that a plain Caſe, and in truth his own Argument ſhews and leaves it a diſputable Point, and if that were doubtful, every particular elſe may well be buried in Oblivion; beſides in Caſes of Conſtruction the nature of the thing admits of doubt, and then there's no colour for Puniſhment; Beſides

In reſpect of Inferior Perſons by our Conſtitution they are obliged to ſubmit to and follow *Weſtminſter-Hall*, which is the *lex loquens Angliæ*, and when all theſe things are duly conſidered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle ſome, aggrieve others, and terrifie none, for that will be the Conſequence, for that's the Caſe of all Violence where the Juſtice of the thing is not clear and undoubted; Then for Exceptions,

Let us think a little, is it reaſonable that ſome ſhould ſuffer for not being afraid of Puniſhments never declared or promulgated, and others ſhall eſcape, becauſe their Countenances are more fawning, or that by conſent their Relations have plaid on the other ſide, or that their ſwinging Fortunes enable them to ſcatter Mice for their perſonal Indemnity, or that they have had the luckly Principle of being faithful to all Changes, and true to nothing elſe, or that they have been forward to ſubvert their old Maſter, after their fire and folly had ruined him and endangered themſelves; theſe and ſuch like are no pleas for Juſtice, and yet this is the Caſe: Further,

The drift is to magnifie and aggrandize Puniſhments by Bill, which by the ſtanding Laws, and common Juſtice of the Realm could not be inflicted, and they urge two Reaſons for it, 1. Their particular Pardons will otherwiſe excuſe them. To that I anſwer, Either they are valid in Law or not, if not, there's no need of Bills; If they are valid in Law, the ſame Law and Juſtice of the Land enjoin their Allowance; even the ſame Law by which the Country-man Plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator ſits in the Houſe, and by the ſame Reaſon that theſe enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a right accrued by the Law as well as the other. 2. The common Channel is too ſmooth: Severity is ſometimes neceſſary, and that now if ever; and therefore the Legiſlative Authority ought to exert its power, and puniſh according to demerit; To anſwer that, I ſay, either they are no offences by Law, and there needs a Bill to make them ſuch, and inflict evils upon them as ſuch; or elſe they are offences but deſerve a greater Puniſhment than a common Court may pronounce; now if the firſt be the Caſe then I'm ſure 'tis rank palpable tyrannical Injuſtice, and that's the plague of living under an Arbitrary Power, for none can know what's not Criminal: If they mean the latter, as I ſuppoſe they do, then I ask to what end were Puniſhments invented in Societies but to reſtrain Men from doing particular actions through the power and influence of Fear, and how could that Conſequence be expected when the penalty was never known before 'tis inflicted; and to inflict an evil afterwards, which was not known before, is to make a Man ſuffer that which he could not fear, becauſe he could not know it, and this be-

cauſe

cauſe he did not fear it: and the Juſtice of that is plain too.

I agree with the Satyriſts that there are ſome Precedents of this laſt method of proceeding, but moſt of them are repealed, I'll name two that are ſo, the Earl of *Strafford*'s, which the very Law it ſelf did enjoin Poſtetiry not to obſerve, or follow, or do the like; I can't forget one Expreſſion of his to this effect upon the Tryal, if there be an Error in a Judge, ſo that he give a Sentence otherwiſe than a Man of better underſtanding conceives Reaſon for, there's no cauſe the offence ſhould be heightned becauſe he was not ſo wiſe a Man as he might have been, nor ſo underſtanding as another, which if allowed, will make it more eligible to follow a Plow than ſerve a Government, to dig in a Ditch than bear an Office, for all Men ſtand obnoxious to the Conſtructions and Paſſions of ſucceeding Times: There's one Inſtance more, and that was Sir *Thomas Haxey*'s who was attainted of Treaſon for bringing in a Bill into the Commons Houſe against the Prerogative, though while, and as a Member: I ſuppoſe the Sparks will not much applaud the juſtice of that Procedure for their own ſakes; but as I ſaid before, that and moſt others of their Precedents were repealed, when a cooler Aſſembly met upon the next Seſſion, and ſo was *Haxey*'s, in 1 *Hen.* 4. *Cott. abr. rec.* 362, 393.

But if Vengeance be requiſite, it ought to be without reſpect of Perſons, The *Juſtice* of it ought to be *impartial*, *true* and *Catholick*: and then come in the Penſioners and Surrenderers, the Regulators and Promiſers, the old High Commiſſioners, and the New Creed makers, *&c.* and God knows *quis non*, *&c*, Nay ſince the Revolution, ſome muſt come in for a ſnack of Cenſure too, the buyers and ſellers of Places, the Members that took Offices contrary to their own motion and vote in the *Weſtminſter* Parliament: The Proclamation-men for prohibiting of importing *French* Commodities under pain of [illegible] of Ship and Goods, three Weeks before a War proclaimed, contrary to eleven Acts of Parliament for Free Trade, even in Parliament-time: the Treaſury for farming Lotteries, which are common nuiſances contrary to multitudes of Statutes, and continuing them ſtill with *non-obſtante's* in the Indenture, tho' illegal and void *ab initio*: the great Seal for paſſing four Patents at one Seal in this *Lent* Vacation with *non-obſtante's* contrary to the Bill of Rights, the new Sheriffs for practiſing what themſelves condemn'd in a *Moore* and *North Cum multis aliis quos nunc deſcribere longum*, *&c.* To conclude, Our Saviour's Rule if obſerved will be the moſt infallible Indemnity that can be contrived, and that is, *John* 8. *c.* 7. *v. Let him that is without ſin amongſt you, caſt the firſt ſtone.* And in truth a Cenſor of the Manners of others ought himſelf to be pure, clean and innocent, *in omni re quacunque*; and if there be no danger but from ſuch, I'm ſure there's no danger at all, and that it ſhould be ſo, is the trueſt Juſtice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was diſſolved, every thing reduced into its primitive ſtate of Nature, all power devolved into individuals, and the particulars only to provide for themſelves by a new Contract, for if ſo, there's yet no new conſent for Puniſhment of acts done before the Diſſolution, and conſequently Revenge, for that is at an end; Indemnity therefore ought to be promoted by thoſe who made that Vote, for otherwiſe their truth may be ſuſpected, *&c.*

POSTSCRIPT.

SOme perhaps will blame the boldneſs of this Stile, as provocative rather than palliating, to which I ſay, truth ought never to be ſhamefaced, for *veritas prevalebit*, one time or another: and if it do not, but angers ſome, 'twill be only thoſe that were implacable before, who if they ha'nt good nature enough to pardon a bold ſtroke or two with a Pen, they'll never conſent to an Act of Indemnity, and then their Fury is not to be regarded, for the want of it will inflame (as it hath created) our preſent Diviſions, and conſequently run us at laſt into a true Confuſion, from which, Good Lords deliver us.

FINIS.